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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1465 of 2016

- Shri Ram General Insurance Company Limited, Plot No. 48, First Floor, M.P. Nagar, Zone-2, Bhopal (M.P.) through Branch Office 4th Floor, Maruti Heights, Mohba Bazar, Near R.K. Mal, Tahsil and District Raipur (C.G.) Pin 492 001

  (Insurer)

---- Appellant/Non-applicant No. 3

Versus

1. Tilakdas S/o Jivrakhan Mahilange, aged about 50 years
2. Santoshi Bai W/o Tilak Das, aged about 46 years

   Both are resident of Village Baigakanpa, Thana Lalpur, Tahsil Lormi, District Mungeli (C.G.)

   (Claimants)
3. Lakhan Singh S/o Vishwanath Gond, aged about 22 years, Occupation Vehicle Driver, R/o Village Harri, Thana Gorela, District Bilaspur (C.G.)

   (Driver/Non-applicant No.1)
4. Ramani Rajan Agrawal S/o Laxminarayan Agrawal, aged about 65 years, Occupation Vehicle Owner, R/o Lormi Road, Kota, District Bilaspur (C.G.)

   (Owner/Non-applicant No. 2)

---- Respondents

And

Miscellaneous Appeal (Civil) No. 271 of 2017

1. Tilak Das S/o Jirakhan Mahilage, aged about 50 years
2. Santoshi Bai W/o Tilak Das, aged about 46 years

   Both are R/o Village- Baigakapa Thana- Lalpur, Tahsil- Lormi, District Mungeli (C.G.)

---- Appellants/Claimants

Versus

1. Lakhan Singh S/o Vishwanath Gond, aged about 22 years, R/o Hirri-Thana, Gourela, District Bilaspur (C.G.) (Driver of offending vehicle Haiwa Truck No. C.G. 10/A/7111)

   (Driver)
2. Ramani Rajan Agrawal S/o Laxminarayan Agrawal, aged about 65 years, R/o Lormi, Road Kota, District Bilaspur (C.G.) (Owner of offending vehicle Haiwa Truck No. C.G. 10/A/7111)

   (Owner)
3. Shri Ram General Insurance Company Limited, Plot No. 48, 1st M.P. Nagar Zone -2, Bhopal (M.P.) Through Branch Office 4th Floor Maruti Heights

Mohaba Bazar Near R.K. Mal Tahsil and District Raipur (C.G.) (Insurer of offending vehicle Haiwa Truck No. C.G. 10/A/7111)

(Insurer)

---- Respondents/Non-applicants

For Claimants	:	Shri A.L. Singroul, Advocate
For Non-applicants No. 1 & 2 Driver & Owner	:	Shri Pallav Mishra, Advocate
For Non-applicant No. 3/ Insurance Company	:	Shri Sachin Singh Rajput, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

03.05.2019

1. As both above appeals arise out of the same accident occurred on 17.01.2015 involving the vehicle Truck Hiva bearing registration No. CG-10/A/7111 (hereinafter referred to as the 'offending vehicle'), they are being disposed of by this common judgment.

2. M.A.(C) No. 271 of 2017 has been filed by the Claimants seeking enhancement of compensation.

M.A.(C) No. 1465 of 2016 has been filed by the Insurance Company/non-applicant No.3 challenging the quantum of compensation and liability to pay compensation because at the time of accident, non-applicant No.1, driver of the offending vehicle Hiva, was not having a valid and effective driving licence.

Both above appeals arise out of common award dated 12.08.2016 passed by the Additional Member, Mungeli (C.G.) to the Court of the Additional Motor Accident Claims Tribunal (C.G.) in Claim Case No. 31 of 2015 awarding compensation in favour of the Claimants of Rs.8,17,600/- with interest @ 7.5% per annum from the date of claim application till realization, fastening liability upon non-applicants jointly and severally to pay compensation to the Claimants.

3. Brief facts of the case are that on 17.01.2015 at about 08:00 pm, deceased-Sumant Kumar along with his cousin brother Dilip was coming from Lormi to his village Baigakapa by riding motorcycle. When he reached mungeli-road near petrol-pump, non-applicant No. 1, driver of the offending vehicle Truck Hiva bearing registration No. CG-10/A/7111, owned by non-applicant No.2 and insured with non-applicant No.3, driving the said Truck in a rash and negligent manner, dashed the motorcycle of Sumant Kumar. As a result thereof, Sumant Kumar fell down from the motorcycle and came under the wheel of the said offending Truck due to which he was crushed and sustained grievous injuries on his head and right leg. Sumant Kumar was taken to Community Health Centre, Lormi, where he was declared dead by the Doctor.

4. Learned counsel for the Insurance Company/non-applicant No.3 submits that at the time of accident i.e. on 17.01.2015, non-applicant No.1, driver of the offending vehicle, was not having a valid and effective driving licence to drive the Heavy Goods Vehicle (HGV). He further submits that the Tribunal has fastened liability on the Insurance Company/non-applicant No.3 on the ground that from the document available on record, it is seen that non-applicant No.1 had a licence for transport vehicle which was valid from 24.06.2011 to 23.06.2014 and after the accident, the said licence was renewed from period 19.02.2015 to 18.02.2018 which shows that non-applicant No.1 had an experience to driving the transport vehicle and the Insurance Company could not be adduced any evidence that non-applicant No.1 was not having experience of driving the transport vehicle or non-applicant No.2/owner had permitted non-applicant No.1 to drive the offending vehicle in contravention in terms and conditions of the insurance policy. The aforesaid finding recorded by the Tribunal in respect of liability against the law are liable to be set aside. He also submits that looking to the age of deceased i.e. 26 years and nature of his job, the Tribunal has wrongly considered 50% towards future prospects whereas it should have been 40%. In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of ***Ishwar Chandra & Ors.*** Vs. ***The Oriental Insurance Co. Ltd. & Ors., AIR 2007 SC 1445***; ***National Insurance Co. Ltd.*** Vs. ***Vidhyadhar Mahariwala &***

Ors., AIR 2009 SC 208 and ***National Insurance Co. Ltd.*** Vs. ***Pranay Sethi, (2017) 16 SCC 680***.

5. Learned counsel for non-applicants No. 1 & 2/driver & owner submits that on the date of accident, non-applicant No.1 was not holding licence authorising him to drive the offending vehicle, but from the material available on record, it is evident that prior to the accident, non-applicant No.1 was holding valid and effective licence to drive the offending vehicle and even after the accident, the said licence was duly renewed by the competent authority. In these circumstances, the Tribunal was fully justified in holding that there is no breach of policy conditions on the part of non-applicants No. 1 & 2 and fastened liability on non-applicant No.3/Insurance Company. As regards the quantum of compensation, he supports the contention made in this regard by learned counsel for the Insurance Company.

6. Learned counsel for the Claimants submits that the amount awarded under the conventional heads being on the lower side deserves to be enhanced suitably. No amount towards loss of filial consortium has been granted. In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of *Pranay Sethi* (supra) and ***Magma General Insurance Co. Ltd.*** Vs. ***Nanuram @ Chuhru Ram and others in Civil Appeal No. 9581/2018 arising out of SLP (Civil) No. 3192/2018***.

7. Learned counsel for the Insurance Company and learned counsel for the driver & owner opposed the contention made by learned counsel for the Claimants.

8. Heard learned counsel for the parties and perused the material available on record.

9. It is not disputed by the parties that no counter appeal has been filed by non-applicants No. 1 & 2/driver & owner and the accident happened on 17.01.2015.

10. Section 15 (1) of the Motor Vehicles Act, 1988 and the first proviso appended thereto reads as under:

> "**15. Renewal of driving licences. –** (1) Any licensing authority may, on application made to it, renew a driving licence issued under the provisions of this Act with effect from the date of its expiry:

> Provided that in any case where the application for the renewal of a licence is made more than thirty days after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal:”

11. In *Vidhyadhar Mahariwala* (supra), the Hon'ble Supreme Court found that driving licence of driver of offending vehicle was not in force on date of accident and therefore, Insurance Company was exonerated of its liability.

12. In *Ishwar Chandra* (supra), it was held that the defence of the insurer that the driver did not have valid licence on the date of accident, has to be established on facts of the case.

13. As per Ex.-D/6, permit issued in favour of the offending vehicle and gross weight of the vehicle is 25,000 Kg. As per Ex.-D/3, insurance policy, it is also mentioned this fact that gross vehicle weight is 25,000 Kg and vehicle is heavy goods vehicle. Ex.-D/1 and Ex.-D/2 are proved by NAW-1 Vijay Tiwari witness of non-applicant No.3 which go to show that driving licence to drive the transport vehicle was issued in favour of non-applicant No.1, diver of the offending vehicle, w.e.f. 24.06.2011 for three years which was valid till 23.06.2014 and which was renewed from 19.02.2015 and was valid till 18.02.2018. In between from 24.06.2014 to 19.02.2015, no any valid and effective licence was held by non-applicant No.1 and on 17.01.2015 accident occurred. Looking to the proviso appended to Section 15 (1) of the Act, keeping in view of the judgments of the Hon'ble Supreme Courts in the matters of *Vidhyadhar Mahariwala* and *Ishwar Chandra* (supra), it stands proved that non-applicant No.1 was not having a valid and effective driving licence to drive the heavy goods vehicle on the date of accident.

14. Considering the facts and circumstances of the case and particularly the fact that it was proved by the Insurance Company that on the date of accident, non-applicant No.1, the driver of the offending vehicle, was not having a valid and effective driving licence to drive the heavy goods vehicle, the finding of the Tribunal regarding fastening of liability on the Appellant/non-applicant No.3 is hereby set aside. Therefore, while exonerating the Insurance Company, the driver & owner/non-applicants No. 1 & 2 are held jointly and severally liable to pay compensation to the Claimants.

15. As per Ex.-A/10, the deceased was earning Rs.5,115/- per month as Computer Operator in Digital Weighing Systems (P) Ltd., therefore, the Tribunal was justified in considering the income of the deceased as Rs.5,115/- per month.

16. So far as argument relating to grant of 50% towards future prospects by the Insurance Company and argument relating to non-grant of filial consortium & grant of low amount under the conventional heads by the Claimants are concerned, considering the age of the deceased i.e. in between 26-30 years and the fact that he was unmarried, the dependency, the nature of his job and the decisions of Hon'ble Supreme Court in ***Smt. Sarla Verma and others*** Vs. ***Delhi Transport Corporation and another, (2009) 6 SCC 121***, *Pranay Sethi* and *Magma General Insurance Co. Ltd.* (supra), the Claimants are held entitled to compensation in the following manner:

Sl.No.	**Heads**	**Calculation (In rupees)**
1.	Income of the deceased @ Rs.5,115/- per month	Rs.61,380/- per annum
2.	40% towards future prospects added to annual income	(Rs.61,380/- + Rs.24,552/-) Rs.85,932/-
3.	50% deduction towards personal and living expenses of the deceased	(Rs.85,932/- – Rs.42,966/-) Rs.42,966/-
4.	Multiplier of 17 applied	Rs.42,966/- x 17= Rs.7,30,422/-
5.	<u>Conventional Heads:</u> Loss of estate & funeral expenses	Rs.30,000/-
6.	Towards loss of filial consortium to Claimants @ Rs.30,000/- each	Rs.60,000/-
	Total Compensation	**Rs.8,20,422/-**

Since the Tribunal has already awarded Rs.8,17,600/-, after deducting the same from the above amount, the Claimants are held entitled for additional compensation of Rs.2,822/- with interest @ 7.5% per annum from the date of application till realization.

17. Keeping in view of the decisions of the Hon'ble Supreme Court in the matter of ***Manuara Khatun and others*** Vs. ***Rajesh Kumar Singh and others, (2017) 4 SCC 796***, the fact that as per Ex.-D/3, insurance policy, the offending vehicle was duly insured with non-applicant No.3 and deceased was a third party, this Court feels it proper to order for pay and recover in this case. Hence, non-applicant No.3/Shri Ram General Insurance Company Limited is directed to pay the awarded sum to the Claimants and then recover the same from non-applicants No. 1 & 2/the driver and owner (Lakhan Singh & Ramani Rajan Agrawal) of the offending vehicle as per law laid down in Manager, National Insurance Company Limited Vs. Saju P. Paul & Anr., (2013) 2 SCC 41.

18. In the result, both appeal i.e. M.A.(C) No. 271 of 2017 filed by the Claimants and appeal i.e. M.A.(C) No. 1465 of 2016 filed by the Insurance Company/non-applicant No.3 are allowed in part with modification in the impugned award to the above extent. However, rest of the conditions of the impugned award shall remain intact.

19. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

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